

member who has engaged in the illegal use of drugs to submit evidence of participation in, or successful completion of, a treatment program as a condition to being allowed to reside in the unit.

(c) *Evidence of criminal activity.* In determining whether to deny or terminate assistance based on drug-related criminal activity or violent criminal activity, the HA may deny or terminate assistance if the preponderance of evidence indicates that a family member has engaged in such activity, regardless of whether the family member has been arrested or convicted.

**§ 982.554 Informal review for applicant.**

(a) *Notice to applicant.* The HA must give an applicant for participation prompt notice of a decision denying assistance to the applicant. The notice must contain a brief statement of the reasons for the HA decision. The notice must also state that the applicant may request an informal review of the decision and must describe how to obtain the informal review.

(b) *Informal review process.* The HA must give an applicant an opportunity for an informal review of the HA decision denying assistance to the applicant. The administrative plan must state the HA procedures for conducting an informal review. The HA review procedures must comply with the following:

(1) The review may be conducted by any person or persons designated by the HA, other than a person who made or approved the decision under review or a subordinate of this person.

(2) The applicant must be given an opportunity to present written or oral objections to the HA decision.

(3) The HA must notify the applicant of the HA final decision after the informal review, including a brief statement of the reasons for the final decision.

(c) *When informal review is not required.* The HA is not required to provide the applicant an opportunity for an informal review for any of the following:

(1) Discretionary administrative determinations by the HA.

(2) General policy issues or class grievances.

(3) A determination of the family unit size under the HA subsidy standards.

(4) An HA determination not to approve an extension or suspension of a certificate or voucher term.

(5) An HA determination not to grant approval to lease a unit under the program or to approve a proposed lease.

(6) An HA determination that a unit selected by the applicant is not in compliance with HQS.

(7) An HA determination that the unit is not in accordance with HQS because of the family size or composition.

(d) *Restrictions on assistance for non-citizens.* The informal hearing provisions for the denial of assistance on the basis of ineligible immigration status are contained in 24 CFR part 5.

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[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 13627, Mar. 27, 1996]

**§ 982.555 Informal hearing for participant.**

(a) *When hearing is required.*—(1) An HA must give a participant family an opportunity for an informal hearing to consider whether the following HA decisions relating to the individual circumstances of a participant family are in accordance with the law, HUD regulations and HA policies:

(i) A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment.

(ii) A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the HA utility allowance schedule.

(iii) A determination of the family unit size under the HA subsidy standards.

(iv) A determination that a certificate program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under the HA subsidy standards, or the HA determination to deny the family's request for an exception from the standards.

(v) A determination to terminate assistance for a participant family because of the family's action or failure to act (see § 982.552).

(vi) A determination to terminate assistance because the participant family has been absent from the assisted unit for longer than the maximum period permitted under HA policy and HUD rules.

(2) In the cases described in paragraphs (a)(1) (iv), (v) and (vi) of this section, the HA must give the opportunity for an informal hearing before the HA terminates housing assistance payments for the family under an outstanding HAP contract.

(b) *When hearing is not required.* The HA is not required to provide a participant family an opportunity for an informal hearing for any of the following:

(1) Discretionary administrative determinations by the HA.

(2) General policy issues or class grievances.

(3) Establishment of the HA schedule of utility allowances for families in the program.

(4) An HA determination not to approve an extension or suspension of a certificate or voucher term.

(5) An HA determination not to approve a unit or lease.

(6) An HA determination that an assisted unit is not in compliance with HQS. (However, the HA must provide the opportunity for an informal hearing for a decision to terminate assistance for a breach of the HQS caused by the family as described in § 982.551(c).)

(7) An HA determination that the unit is not in accordance with HQS because of the family size.

(8) A determination by the HA to exercise or not to exercise any right or remedy against the owner under a HAP contract.

(c) *Notice to family.* (1) In the cases described in paragraphs (a)(1) (i), (ii) and (iii) of this section, the HA must notify the family that the family may ask for an explanation of the basis of the HA determination, and that if the family does not agree with the determination, the family may request an informal hearing on the decision.

(2) In the cases described in paragraphs (a)(1) (iv), (v) and (vi) of this section, the HA must give the family

prompt written notice that the family may request a hearing. The notice must:

(i) Contain a brief statement of reasons for the decision,

(ii) State that if the family does not agree with the decision, the family may request an informal hearing on the decision, and

(iii) State the deadline for the family to request an informal hearing.

(d) *Expeditious hearing process.* Where a hearing for a participant family is required under this section, the HA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

(e) *Hearing procedures—(1) Administrative plan.* The administrative plan must state the HA procedures for conducting informal hearings for participants.

(2) *Discover—(i) By family.* The family must be given the opportunity to examine before the HA hearing any HA documents that are directly relevant to the hearing. The family must be allowed to copy any such document at the family's expense. If the HA does not make the document available for examination on request of the family, the HA may not rely on the document at the hearing.

(ii) *By HA.* The HA hearing procedures may provide that the HA must be given the opportunity to examine at HA offices before the HA hearing any family documents that are directly relevant to the hearing. The HA must be allowed to copy any such document at the HA's expense. If the family does not make the document available for examination on request of the HA, the family may not rely on the document at the hearing.

(iii) *Documents.* The term "documents" includes records and regulations.

(3) *Representation of family.* At its own expense, the family may be represented by a lawyer or other representative.

(4) *Hearing officer: Appointment and authority.* (i) The hearing may be conducted by any person or persons designated by the HA, other than a person who made or approved the decision under review or a subordinate of this person.

(ii) The person who conducts the hearing may regulate the conduct of

the hearing in accordance with the HA hearing procedures.

(5) *Evidence.* The HA and the family must be given the opportunity to present evidence, and may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

(6) *Issuance of decision.* The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family shall be based on a preponderance of the evidence presented at the hearing. A copy of the hearing decision shall be furnished promptly to the family.

(f) *Effect of decision.* The HA is not bound by a hearing decision:

(1) Concerning a matter for which the HA is not required to provide an opportunity for an informal hearing under this section, or that otherwise exceeds the authority of the person conducting the hearing under the HA hearing procedures.

(2) Contrary to HUD regulations or requirements, or otherwise contrary to federal, State, or local law.

(3) If the HA determines that it is not bound by a hearing decision, the HA must promptly notify the family of the determination, and of the reasons for the determination.

(g) *Restrictions on assistance to noncitizens.* The informal hearing provisions for the denial of assistance on the basis of ineligible immigration status are contained in 24 CFR part 5.

(Approved by the Office of Management and Budget under control number 2577-0169)

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## Subpart M—Special Housing Types

SOURCE: 63 FR 23865, Apr. 30, 1998, unless otherwise noted.

### § 982.601 Overview.

(a) *Special housing types.* This subpart describes program requirements for special housing types. The following are the special housing types:

- (1) Single room occupancy (SRO) housing;
- (2) Congregate housing;
- (3) Group home;
- (4) Shared housing;
- (5) Cooperative (including mutual housing);
- (6) Manufactured home.

(b) *HA choice to offer special housing type.* (1) The HA may permit a family to use any of the following special housing types in accordance with requirements of the program: single room occupancy housing, congregate housing, group home, shared housing or cooperative housing.

(2) In general, the HA is not required to permit use of any of these special housing types in its program.

(3) The HA must permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8.

(4) For occupancy of a manufactured home, see § 982.620(a).

(c) *Family choice of housing and housing type.* The HA may not set aside program funding for special housing types, or for a specific special housing type. The family chooses whether to rent housing that qualifies as a special housing type under this subpart, or as any specific special housing type, or to rent other eligible housing in accordance with requirements of the program. The HA may not restrict the family's freedom to choose among available units in accordance with § 982.353.

(d) *Applicability of requirements.* Except as modified by this subpart, requirements in the other subparts of this part apply to the special housing types. Provisions in this subpart only apply to a specific special housing type. The housing type is noted in the title of each section.

### SINGLE ROOM OCCUPANCY (SRO)

#### § 982.602 SRO: General.

(a) *Who may reside in an SRO?* A single person may reside in an SRO housing unit.

(b) *When may a person rent an SRO housing unit?* A single person may rent a unit in SRO housing only if: